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SHASTA TECHNOLOGIES, LLC and CONDUCTIVE TECHNOLOGIES, INC.

20 **UNITED STATES DISTRICT COURT**

21 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

22 LIFESCAN SCOTLAND, LTD.,

Case No. CV11-04494-EJD (PSG)

23 Plaintiff,

**DEFENDANTS' SUPPLEMENTAL CASE
MANAGEMENT STATEMENT**

24 v.

Fed. R. Civ. P. 26(f)

25 SHASTA TECHNOLOGIES, LLC,
INSTACARE CORP., PHARMATECH
26 SOLUTIONS, INC., and CONDUCTIVE
TECHNOLOGIES, INC.,

Civ. L. R. 16-9

Patent L.R. 2-1

27 Defendants.

Judge: Honorable Edward J. Davila

Courtroom: 1

Date: January 20, 2012

Time: 10:00 a.m.

1 Pursuant to the Court's Order of January 11, 2012, Defendants Shasta Technologies, LLC
 2 ("Shasta"), Instacare Corp. ("Instacare"), Pharmatech Solutions, Inc. ("Pharmatech") and
 3 Conductive Technologies, Inc. ("Conductive") (collectively, "Defendants") submit this
 4 Supplemental Case Management Statement.

5 **Section 17: Discovery and Pre-trial Scheduling:**

6 As set forth in the parties' Joint CMC Statement, Defendants request that all discovery be
 7 stayed until such time as the Court rules on Defendants' pending motions, presently set for March
 8 23, 2012. Specifically, Defendants propose that the discovery Stay apply to any new discovery
 9 and all first party discovery.¹ Consistent with this approach, Defendants propose that a further
 10 CMC can be held after the Court's ruling on the motions, if necessary, at which time the parties
 11 can address an appropriate discovery plan and schedule. The Defendants request this because at
 12 present there is no "final" product on the market and the anticipated product is still in the
 13 application process before the FDA. As such, any efforts at discovery at present will constantly
 14 be forced to deal with the fact that there is no final product at issue.

15 Alternatively, Defendants have proposed that the entire case be stayed until such time as
 16 the FDA approves the test strips, at which time the parties can schedule a further CMC with the
 17 Court.

18 Now, as yet another alternative approach, and pursuant to the Court's January 11, 2012
 19 Order, the Defendants propose the following schedule. Defendants do so only as an alternative to
 20 their request for a stay of discovery and this litigation until the Court rules on the Defendants'
 21 pending motions.

22 The proposed schedule addresses the future handling of the case up through the Claim
 23 Construction Hearing (proposed for January 2013), at which point the Defendants propose a
 24 Further Case Management Conference to address the final deadlines and schedules for the
 25 litigation.

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27

28 ¹ To the extent third party subpoenas have been served, it seems most efficient to have those should go forward at
 this time.

1 Please note, the following proposed schedule adopts plaintiff's proposed date of January
 2 27, 2012 for its Patent Local Rules 3-1 and 3-2 disclosures.

| Event | Proposed Date |
|---|---|
| Initial Case Management Conference | January 20, 2012 |
| LifeScan Scotland's disclosure of asserted claims and infringement contentions (Patent L.R. 3-1) and related document production (Patent L.R. 3-2). | January 27, 2012 |
| Rule 26(a)(1)(A) initial disclosures | February 24, 2012, or later if modified at the CMC. |
| Hearing on Defendants' Motions | March 23, 2012 |
| Defendants' invalidity contentions (Patent L.R. 3-3) and related document production (Patent L.R. 3-4) | April 20, 2012 (all further dates might require modification following the March 23 hearing.) |
| Exchange of proposed terms and claim elements for construction (Patent L.R. 4-1(a)) | May 16, 2012 |
| Exchange of preliminary proposed claim construction and extrinsic evidence (Patent L.R. 4-2) and initial disclosure of claim construction expert identities and résumés | August 6, 2012 |
| Joint claim construction statement (Patent L.R. 4-3) – limited to 10 terms unless leave of court granted. | September 18, 2012 |
| Completion of Claim Construction Discovery Other Than Expert Depositions (Patent L.R. 4-4) | October 19, 2012 |
| LifeScan Scotland's opening claim construction brief (Patent L.R. 4-5(a)) and any expert declaration in support | November 5, 2012 |
| Defendants' opposing claim construction Brief, (Patent L.R. 4-5(b)) and any expert declaration in support | December 3, 2012 |
| LifeScan Scotland's reply claim construction brief (Patent L.R. 4-5(c)). | December 24, 2012 |
| Technology Tutorial | January 11, 2013 or other such day that is convenient for the Court |
| Claim Construction Hearing | January 11, 2013 or other such day that is convenient for the Court |
| Further Case Management Conference for setting remaining trial and pretrial dates. | February 15, 2013, or at the Court's convenience. |

26 **Limitations on Discovery:**

27 As set forth in their section in the Joint CMC Statement, Defendants oppose plaintiff's
 28 requests to expand the presumptive discovery limitations per the Federal Rules and of this Court.

1 Specifically, Defendants can see no reason why such a large number of hours of deposition
2 testimony should be requested by plaintiff or even considered. Likewise, there is no reason at this
3 point in time to modify the limits on depositions as set forth in Rule 30. Plaintiff has provided no
4 explanation or reason for modifying those limitations. Defendants do not agree at this time to
5 plaintiff's proposed discovery modifications.

6 Dated: January 13, 2012

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17 Dated: January 13, 2012

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19 By: /s/ Robert P. Andris
20 ROBERT P. ANDRIS
21 LAEL E. ANDARA
22 Attorneys for Defendants
SHASTA TECHNOLOGIES, LLC and
CONDUCTIVE TECHNOLOGIES, INC.

23 I hereby attest that I have on file written permission to sign this stipulation from all parties
24 whose signatures are indicated by a "conformed" signature (/s/) within this e-filed document.
25

26 /s/ Francis J. Torrence